Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications by BellSouth Corporation *et al.*	)	WC Docket No. 02-150
for Authorization to Provide In-Region,	)	
InterLATA Services in Alabama, Kentucky,	)	
Mississippi, North Carolina and South Carolina	)	

COMMENTS OF COVAD COMMUNICATIONS COMPANY

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I. INTRODUCTION

Covad Communications Company (Covad), by its attorneys, hereby respectfully submits its comments in opposition to the Alabama, Kentucky, Mississippi, North Carolina and South Carolina long distance applications submitted by BellSouth.[1] With these five applications, BellSouth continues a long tradition of filing such applications prematurely. The Commission must stand firm against this latest attempt to ignore the competitive checklist.

Covad is the leading nationwide provider of broadband connectivity using digital subscriber line (DSL) technology. Covad's nationwide facilities-based broadband network reaches nearly 45% of the nation's homes and businesses. Covad offers residential and business users a wide variety of innovative and competitively priced broadband services, and currently provides broadband connectivity to over a third of a million customers. Covad competes directly with the retail broadband offerings of BellSouth and other Bell Operating Companies, providing vital innovation and price pressure on the Bells that has sparked widespread DSL deployment in the five years since Covad launched the first commercial DSL offering in the nation.

As a facilities-based provider, Covad relies on BellSouth to provide unbundled transmission facilities (loops and interoffice transport) and the operations support systems (OSS) necessary to facilitate ordering and provisioning of such facilities. Covad is collocated in hundreds of central offices throughout the BellSouth territory, and from those central offices, Covad offers consumers and small and medium-sized businesses a competitively priced alternative to BellSouth's high-priced T-1 services. Covad also provides residential consumers the nation's lowest price DSL offering, Telesurfer Link, which provides broadband connectivity at or below the price of dial-up services. In the face of these intense competitive pressures,

BellSouth has both the incentive and the ability to handicap Covad's pro-competitive offerings by denying, delaying, and degrading the UNEs that BellSouth is required to provide. Given the current crisis in the telecommunications sector, consumers and competitive carriers need the Commission's honest and diligent evaluation of BellSouth's compliance with its market-opening obligations now more than ever.

Covad raises two principal objections to these applications, centered on checklist items two and four.[2] First, BellSouth's operations support systems (OSS) fail to provide competitive LECs like Covad a meaningful opportunity to compete. In these comments, Covad highlights the serious and ongoing problems with the pre-order and ordering OSS that BellSouth makes available. Because BellSouth does not present any evidence of an independent, third party test conducted in any of the states that are the subject of these applications, nor can it demonstrate any viable commercial usage of its interfaces, BellSouth has not satisfied its checklist burden of proof.

Second, Covad describes the facial discrimination demonstrated by BellSouth's performance metrics. Again, because BellSouth has not provided the Commission with an independent, third party evaluation of BellSouth's performance data, BellSouth fails to satisfy its burden. In order to highlight the shortcomings of BellSouth's OSS and UNE performance, Covad provides below specific examples of the discrimination that it continues to suffer throughout the BellSouth region.

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[1] Covad does not currently serve customers in Mississippi or South Carolina, but most of the issues raised in these Comments are region-wide issues. Issues that affect only one state or another are noted.

[2] The petitions for rehearing and rehearing *en banc* filed by the Commission, Covad, and other parties with the U.S. Court of Appeals for the D.C. Circuit in the matter of *USTA v. FCC* delay the issuance of the mandate in that decision. Thus, this application was filed, and comments are now submitted, during a period of time in which all of the Commission's UNE rules remain in full force.

II. CHECKLIST ITEM 2: OPERATIONAL SUPPORT SYSTEM

A. LEGAL STANDARD

The Commission consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition.[3] The Commission has determined that without nondiscriminatory access to the BOC's OSS, a competing carrier "will be severely disadvantaged, if not precluded altogether, from fairly competing."[4] Because OSS access is a necessary prerequisite to UNE access, the Commission examines a BOC's OSS performance to determine compliance with section 271(c)(2)(B)(ii) and (xiv).[5] OSS access means more than just computer systems: BellSouth must prove it provides nondiscriminatory access to the systems, information, documentation, and personnel that support its OSS.[6] In particular, for OSS functions that are analogous to those that a BOC provides to itself, its customers or its affiliates, the nondiscrimination standard requires the BOC to offer requesting carriers access that is equivalent in terms of quality, accuracy, and timeliness.[7]

BellSouth's OSS checklist burden has two components. First, BellSouth must prove that it has deployed functional interfaces and OSS capabilities. Second, it must prove that " the OSS functions that the BOC has deployed are operationally ready, as a practical matter."[8] In order to satisfy the latter prong, BellSouth must prove that it has provided competing carriers the internal

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[3] *See Bell Atlantic New York Order,* at 3990, ¶ 83; *BellSouth South Carolina Order*, 547-48, 585; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653.
[4] *See Bell Atlantic New York Order* at 3990, ¶ 83.
[5] *Bell Atlantic New York Order,* 15 FCC Rcd at 3990, ¶ 84.
[6] *Bell Atlantic New York Order,* 15 FCC Rcd at 3990, ¶ 84.
[7] *Id* at 3991, ¶ 85.
[8] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3992, ¶ 88.

business rules and other formatting information necessary to ensure that a carrier's requests and orders are processed efficiently.[9]

Pursuant to the Commission's section 271 precedent, a Bell Operating Company can take one of two possible pathways to satisfy its burden of proof regarding OSS checklist compliance. As BellSouth well knows from its prior section 271 filings, the Commission has determined that "the most critical aspect of evaluating a BOC's OSS is the actual performance results of commercial usage or, in the absence of commercial usage, testing results."[10] Absent sufficient and reliable data on commercial usage, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS.[11]

B. BELLSOUTH HAS NOT TESTED ITS OSS

Here, BellSouth has not even attempted to provide the Commission with up-to-date third-party test results from any state that is the subject of this application. Instead, it seeks to rely on its OSS regionality claim to once again trot out the deeply flawed Georgia KPMG test. The Commission should, at a minimum, reject these applications until it has the opportunity to examine the results of the more comprehensive, recent and independent KPMG testing from Florida. A draft of the final report for this test has already been released, and it reveals continuing problems with BellSouth's OSS that are echoed in Covad's commercial experience as set forth below.

The problems with the KPMG Georgia test are legion. Not only does this test not even purport to have examined the OSS for any of the states in the current applications, but it is based

[9] *Bell Atlantic New York Order,* 15 FCC Rcd at 3992, ¶ 88.
[10] *BellSouth Lousiana II 271 Order* at ¶ 92.
[11] *Bell Atlantic New York Order, 15 FCC Rcd 3993, ¶ 89.*

on old data, old standards, and outdated systems. The Commission should reject its use to support the current applications. Nevertheless, because BellSouth relies on this testing, Covad is forced to detail its problems once again.

First, the KPMG Georgia test did not examine critical areas of xDSL pre-ordering and ordering. Unfortunately, the Georgia Commission did not have the contractual relationship with KPMG necessary to direct the testing process, and BellSouth chose to proceed with a test directed by itself. Although the Georgia Commission approved some bare-bones test parameters, the details of the test and its scope were left to BellSouth and KPMG. The result is that none of Covad's suggestions were included in the test or reflected in the final reports. As a practical matter, that means that KPMG did not test jeopardy procedures, loop conditioning, electronic ordering for xDSL Loops or Line Shared Loops, missed appointment processes or a host of other critical aspects of OSS.

Second, and critically, the OSS that BellSouth brings to the table for this round of applications is different than the OSS that KPMG tested in Georgia. In some ways it has improved, given that an EDI/LENS process has been implemented for more loop types than in the past. But serious problems remain both with excessive manual processes and with defects in the EDI/LENS OSS it has implemented. Since no independent third-party testing of BellSouth's new OSS systems and processes has been conducted, BellSouth has provided no evidence that its OSS of today actually works for xDSL services. As shown in more detail below, Covad's commercial experience shows significant areas of continuing discrimination in all aspects of the ordering and provisioning process.

It is important to note that Covad's criticism of the KPMG Georgia test as it relates to xDSL loops is not merely theoretical. The test actually failed to test the following processes:

- electronic ordering of stand alone xDSL loops by any of the three electronic order gateways, TAG, LENS, or EDI
- BellSouth's ability to handle high volumes of manual orders for stand alone xDSL loops that cannot be ordered electronically
- missed appointment/jeopardy notices for stand alone xDSL loops
- electronic ordering of linesharing through the three gateways
- provisioning processes and systems for linesharing
- missed appointments/jeopardy for line sharing
- electronic OSS for IDSL loops
- electronic access to loop makeup information

In the absence of an independent test of this long list of critical capabilities, the Commission cannot have any confidence in BellSouth's claims that it provides nondiscriminatory OSS to its competitors. The Commission has long held that an OSS interface need not merely exist—it must be stable and reliable, so that competing carriers can market their services and serve their customers as efficiently and at the same level of quality as a BOC serves its own customers.[12] BellSouth has failed utterly to carry its burden on this issue.

C. BELLSOUTH HAS NOT DEPLOYED THE OSS SYSTEMS NECESSARY TO COMPLY WITH CHECKLIST ITEM 2

(1) BellSouth Has Failed to Mechanize the Ordering of Critical DSL Loops

Covad orders a loop by submitting a Local Service Request (LSR) to BellSouth. There are many ways to do this: the order can be faxed to BellSouth for manual entry, input via the Internet through a Web interface, or placed electronically through a direct application-to-application interface. "Mechanization" of ordering refers to the process whereby manual steps in ordering procedures—like manually entering a faxed order—are eliminated and more efficient

[12] *Bell Atlantic New York Order, 15 FCC Rcd at 4025, 4029, ¶¶ 145, 154.*

ways of ordering are implemented. The ideal process is one in which human intervention is done away with entirely in the intermediate stages of the ordering process. When this sort of efficiency is obtained, the process is said to be a "flow-through" process, and it works like this:

(1) Covad gets a call for service from a new customer;

(2) Covad inputs the customer's information into a computer interface designed by Covad to match specific parameters provided by BellSouth;

(3) the customer information automatically populates a BellSouth electronic LSR form;

(4) the LSR is transmitted to BellSouth;

(5) a BellSouth computer receives the LSR and processes it automatically;

(6) tasks necessary to fill the order are automatically generated and sent electronically to BellSouth personnel responsible for completing the order;

(7) the BellSouth computers also transmit a Firm Order Commitment (FOC) to Covad;

(8) Covad's internal OSS extracts necessary information from the FOC, updates internal databases, and routes necessary information for completing the order to appropriate Covad personnel;

(9) BellSouth personnel take the steps necessary to complete the order;

(10) An order completion notification is sent to Covad;

(11) Covad personnel take the final steps necessary to activate service for Covad's customer; and

(12) The order is closed.

For the telecommunications services that Covad seeks to offer its customers, Covad orders BellSouth's Unbundled Copper Loop—Non-Designed (UCL-ND) loop, its ADSL-compatible Loop, the UDC/IDSL-compatible loop, Line Shared Loops and the DS-1 4-wire Loop (to provision UNE T-1 services). Unfortunately, BellSouth has either failed to mechanize a number of pre-ordering or ordering process for these loops or has refused to fix serious OSS defects that cause the orders to fall out of a mechanized process for manual handling. Further, because BellSouth has failed to make electronic ordering available (through ANY interface) for UCL-ND loops and ADSL loops that require conditioning, Covad must order many of its loops manually.

Manual OSS processes are responsible for several problems aside from the bare fact that by their very existence they demonstrate BellSouth's discrimination against Covad and other CLECs. Not only is it more expensive to do business with manual processes (due to manual order service charges and the increased cost to Covad of having to handle orders manually), but it is hugely inefficient. The lack of electronic ordering capabilities and OSS defects for these loops means that Covad must, for UCL-ND and xDSL loops with conditioning, submit the loop order manually (and, where necessary, manually supplement, cancel, disconnect or change it). For Line Shared Loops, several serious OSS defects discussed in detail below necessitate manual handling by Covad after BellSouth returns a Firm Order Commitment (FOC). By failing to provide electronic ordering for these loops, BellSouth sentences Covad to a prison of slow, expensive and time consuming manual processes for the foreseeable future. This deprives Covad of a meaningful opportunity to compete in the states that are the subject of these applications. Moreover, it demonstrates marked discrimination against Covad, given that

BellSouth retail analogs for these loops can all be ordered electronically with no necessity for manual intervention.

The competitive impact of BellSouth's failure to provide flow-through mechanization are significant. The Commission has recognized in several past section 271 orders that a BOC that makes only manual OSS capabilities available to competitive LECs does not comply with the OSS requirements of the competitive checklist. There is a simple reason why the Commission has repeatedly reached that conclusion: the competitive harm that Covad suffers as a result of BellSouth's refusal to provide a full range of electronic OSS capabilities is significant.

If BellSouth provided a checklist-compliant OSS capability, Covad would not have to deal with these cumbersome and expensive manual processes and the mountain of faxes, phone calls, separate systems, and errors that go with them.[13] Rather, Covad would have a seamless, end-to-end automated transaction that would save time and money. By refusing to implement a fully-functional automated OSS, BellSouth is making a perverse, yet understandable, business decision. Conducting the unbundled loop ordering process manually adds to BellSouth's own cost of doing business (additional headcount at the LCSC, if nothing else). At the same time, competitors are deterred from operating in the BellSouth territory because of the high cost of submitting wholesale orders. Simply put, it is more expensive for Covad to place orders in BellSouth's territory compared to other territories, and it is more difficult to track the progress of orders. The lack of automated OSS functionality ripples across Covad's entire business

[13] These manual processes foisted on Covad by BellSouth do not merely raise an academic question of degree of compliance with the competitive checklist. Consumers seeking broadband services will make their decision based in large part on the timeliness in which service is activated – BellSouth's retail DSL offering features the automated processes that are necessary for rapid, consumer-friendly service delivery. As BellSouth has both the ability and (more importantly) the incentive to handicap Covad's retail services by consigning Covad to slower, manual processes, the competitive impact is obvious.

operation, raising Covad's cost of doing business and hindering its ability to provide superior customer service to its end-users.

This disparity in treatment between BellSouth wholesale and retail should not come as a surprise to the Commission. Such disparity has been the hallmark of every single BellSouth long distance application. Indeed, note the Commission observation on the competitive harm inflicted by BellSouth's OSS in 1997:

> Without such an integrated system, a new entrant is forced to enter information manually . . . . Entering information manually can lead to significant delays while the customer is on the line, assuming that a carrier wants to complete the order while speaking to the customer. Moreover, whether a carrier completes the order while the customer is on the line, as BellSouth's customer service representatives generally do, or enters the information at a later time, such manual entry of data requires a greater amount of time than BellSouth's retail operation requires. As a result, the need to reenter information may limit a new entrant's ability to process a high volume of orders and would require a new entrant to expend a greater amount of resources than BellSouth to conduct the same number of pre-ordering transactions.[14]

Also in 1997, the Commission reached a similar conclusion as to the cause of errors and the high number of BellSouth rejections of CLEC orders, and the competitive harm CLECs suffer as a result of manual OSS processes:

> Such manual entry of data also could lead to increased errors in entering information when placing an order. As discussed above, BellSouth's systems are rejecting the vast majority of orders submitted by competing carriers. Although BellSouth claims that these high rejection rates are due to mistakes made by competing carriers, we conclude above that BellSouth's actions have contributed to such errors. It is reasonable to assume that this manual entry of information is a contributing factor to the high error rate, as a number of parties contend. Accordingly, competitors' access to BellSouth's pre-ordering operations support systems is more

[14] In the Matter of Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, As Amended, to Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, 13 FCC Rcd 539 (1997), at ¶ 156.

> conducive to errors than is the case for BellSouth's retail operations. When new entrants' customer service representatives make errors because of reentering information, the orders are rejected, and there is an unnecessary delay in processing those orders. As a result, customers may conclude that the new entrant does not match the quality of BellSouth's service, even though the problem stems from the access to OSS functions that BellSouth offers.[15]

(i) **The Ordering of the UCL-ND Loop Has Not Been Mechanized**

The UCL-ND is a plain copper loop over which Covad can provide its customers with various DSL services. BellSouth began offering this loop in response to the concerns of Covad and various state commissions regarding BellSouth's expensive and unnecessary "design services" that it performs on DSL-capable loops. The UCL-ND loop is less expensive than the BellSouth xDSL loops because it does not go through the BellSouth "design process." Unfortunately, the early promise of this loop has been squandered by BellSouth's refusal to mechanize it and its apparent inability to provision it properly (discussed in more detail below).

Despite the fact that BellSouth has offered this loop for more than a year, ordering it is still a fully manual process, and a date for final mechanization is unknown. *Partial* mechanization of this loop was supposed to occur on July 13, 2002, but this has already been delayed until August 24-25, 2002. BellSouth also claims that full mechanization of this loop will occur in its December 2002 software releases. Based on its past experience, there is no way to know if BellSouth will actually adhere to this schedule.

(ii) **The Ordering of Conditioned Loops Has Not Been Mechanized**

The ordering of conditioned loops is the second area where the lack of mechanization harms CLECs, and it is another area in which BellSouth's retail operations enjoy an advantage in that its ordering processes are fully mechanized. Loop conditioning is the process by which

[15] *Id.* at ¶ 157.

electronics in a circuit that could interfere with the transmission of DSL signals are removed, and the importance of mechanizing the ordering process for conditioned loops cannot be overstated. Without a mechanized process, for any loop that requires conditioning, Covad is forced once again to revert to a manual ordering process, not because Covad lacks the tools to place the order electronically, but, rather, because BellSouth has not made that functionality available. Thus, for a loop that requires conditioning, any advantage obtained from mechanization of the loop ordering process is lost.

The solution to this problem is simple, yet BellSouth has yet to so much as discuss scheduling the necessary OSS modifications. CLECs should be able to place an order for a loop that directs BellSouth to condition the loop if, and only if required. This avoids the costly and time-consuming process of being forced to manually submit a separate order for conditioning. At a minimum, however, Covad should be able to order loop conditioning in a flow-though process that requires as little human intervention as technologically possible.

(iii) Serious Problems Remain With the Mechanization of the Line Shared Loop

Line Shared Loops are the principle means by which Covad delivers DSL services to residential customers. Without this UNE, it would be virtually impossible from an economic standpoint for Covad or any other CLEC to provide DSL services at an affordable price for residential use. BellSouth, of course, is an extensive user of line sharing technology itself, and this technology has enabled it to rapidly deploy DSL throughout the region. By using the high frequency portion of the local voice loop, BellSouth has been able to add more than 620,000 customers to its network and projects that number to grow to 1.1 million by the end of the year.[16]

[16] BellSouth press release dated January 3, 2002 (available at http://bellsouthcorp.com/proactive/newsroom/release.vtml?id=38723)

Comparing the quality of the OSS that BellSouth provides for CLECs to the OSS it enjoys for its retail line sharing customers provides a unique window into its discriminatory practices, because BellSouth and the CLECs are providing the same service over the same kind of loop. But it is quite easy to see that BellSouth's ordering systems for CLEC line shared loops are simply not as good as the ordering systems that it uses for its own retail DSL services. Unfortunately, although BellSouth has a fully mechanized ordering process for its own line shared retail service, it has proven unable or unwilling to provide the same level of flow-through mechanization for the ordering of Line Shared Loops by CLECs.

There are two specific and ongoing defects with its system. The first of these involves the inability of BellSouth's automated systems to return information to Covad that would allow us to validate BellSouth's billing practices. Covad places orders for Line Shared Loops by submitting a Local Service Request (LSR) to BellSouth. BellSouth responds to the LSR with a Firm Order Commitment (FOC) that contains a variety of information that Covad uses to track the order and—eventually—reconcile the bills that BellSouth generates. One critical piece of information that should be returned with the FOC but is not is the pseudo circuit number. When BellSouth sends Covad a bill that contains—among its thousands and thousands of entries—the charges for a single line shared loop serving one of Covad's customers, those charges will be identified only by the pseudo circuit number. If Covad does not have that number it is impossible to determine if we are being billed properly. To work around this defect in BellSouth's OSS, Covad is forced to: (1) stop the flow-through process of the order; (2) manually access the FOC; (3) use information contained on the FOC to manually access BellSouth's CSOTS database; (4) extract the pseudo circuit number from that database; (5)

manually input the pseudo circuit number on the Covad order; (6) and then manually complete and close the order.[17]

Because, as noted above, manual handling of an order is very expensive, this defect places Covad at a significant competitive disadvantage. In order to provide consumers and small businesses with innovative, cost-effective DSL service offerings, Covad has automated its processes to the greatest extent possible, thereby minimizing human intervention and maximizing the savings and the quality of service that we can pass on to our customers. By forcing us to manually address OSS defects that BellSouth does not face for its own retail service, BellSouth is discriminating against Covad. But this is by no means where the problem stops.

Thus far, despite the fact that BellSouth has complete flow-through mechanization for its retail line sharing orders, it has refused to even commit to a date on which it will solve this costly defect for Covad and other CLECs. This is true even though Covad has attempted to use the BellSouth Change Control process to have the defect fixed: as will be discussed in detail below, on January 18, 2002, Covad submitted Change Request 621 to BellSouth specifically requesting that this serious defect be corrected. Today, six months later, BellSouth has yet to even schedule its repair.

The second major defect with BellSouth's OSS for the ordering of Line Shared Loops arises from the fact that when a Line Shared Loop order is placed, BellSouth creates two separate orders internally: one that goes to its billing department and one that goes to the Central Office where the Line Shared Loop is actually provisioned. Unfortunately, BellSouth does not

[17] BellSouth does return a circuit number with the FOC for all of its "designed" loops, so it cannot argue that this is a superfluous part of the ordering process. Further, it is difficult to believe that CLECs are expected to pay BellSouth's unwarranted and unnecessary "design" costs just to get the information necessary to validate

relate these two orders to each other internally. The billing order is generally completed within 24 hours, and, once this has happened, BellSouth deems the order complete and begins to bill for the circuit. The order, however, ***is not*** complete because it has yet to be actually provisioned, and many negative consequences flow from this.

First, and most obviously, Covad should not have to pay for a circuit that BellSouth has not provisioned. BellSouth must fix this process so that the billing cycle does not begin until the work in the Central Office has been completed and the loop has actually been delivered to Covad. Second, BellSouth's premature showing of a "completed" order in its billing system can prove quite expensive to Covad in other ways. For example, take a typical situation where a Covad customer places a Line Sharing Order. Even before the order is complete, Covad checks BellSouth's databases to ensure that the technical parameters for the requested Line Shared Loop will support the service. Assuming that the answer to this question is positive, Covad then places the order electronically with BellSouth which generates—as noted above—a billing order and a work order. The billing order completes in about 24 hours and BellSouth improperly begins to bill Covad for the loop. When BellSouth personnel in the Central Office attempt to complete the order, however, they discover that BellSouth's LFACS database contained inaccurate information and the loop actually requires conditioning before it will be able to support DSL service.

Under these circumstances, if BellSouth had not "completed" the billing portion of the loop order, Covad would be able to modify the order and request that the loop be conditioned. Instead, Covad is forced to place a Disconnect Order on the loop even though it was never connected in the first place. This is a much more expensive and time-consuming process than a

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BellSouth's billing practices. This would be akin to making a purchase at a department store only to be told that it

simple order modification, and this is an added expense that BellSouth itself would never incur under similar circumstances. But this is not where the trouble ends.

Based on the information in BellSouth's databases and the Firm Order Commitment that it returns to Covad after an order has been placed, Covad has given its customer an indication as to when he or she can expect service to begin. Suddenly, however, this window has been lengthened dramatically because now, in addition to needing to condition the loop, Covad has to first wait for BellSouth to process the unneeded disconnect order, only after which the order for loop conditioning can be placed. This cumbersome process leads to dissatisfied customers, and, again, this is not a hardship that BellSouth's own customers would be subjected to. In short, BellSouth's inability to take the simple step of delivering the loop before "completing" the billing portion of the order costs Covad money and the good will of its customers. Both of these problems are caused solely by a BellSouth OSS defect that burdens only competitors, and not BellSouth's retail line shared services.

Again, Covad has attempted to get this defect resolved, but to no avail. Covad submitted Change Request 779 on May 9, 2002, but BellSouth has yet to provide a date as to when this serious defect is going to be repaired.

(2) BellSouth's Plan to Close the TAG Gateway Is Discriminatory

The TAG Pre-Order Gateway is an Application Program Interface (API) interface that provides address validation information for customers and obtains necessary information about the loops that may be serving that customer's premises. It allows Covad to determine at the "pre-ordering" stage of the process based on information contained in various BellSouth databases whether or not Covad can provide the customer with the DSL service that he or she

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would cost you extra to find out what the department store was planning to charge your credit card.

wants. Getting this information as early as possible prevents customer dissatisfaction and also prevents Covad from attempting to provision a loop that will not support DSL service (i.e. a loop that extends more than 18,000 feet from the Central Office).

The current way in which the TAG Pre-Order Gateway works is not ideal because CLECs are not actually able to place orders with this interface, an action that is taken in BellSouth's EDI system. To attempt to solve this problem and streamline the overall billing process, the CLEC community has prioritized the creation of a pre-ordering function in EDI as their highest priority in an effort to gain the ability to carry out, for the first time, both pre-ordering and ordering functions through a single interface. BellSouth has begun the process necessary to implement this change, but its current timetable calls for it to retire the existing TAG Gateway ***before*** the new EDI pre-order functionality is ready. This is unacceptable because it forces Covad to incur significant costs in migrating to a new pre-ordering platform after the TAG Gateway shutdown only to have those costs recur yet again at a later time when the EDI pre-order process is finally implemented. These migration costs are not borne by BellSouth because its ordering processes are not changing. BellSouth should be required to keep the existing TAG pre-ordering function available until the EDI pre-order process is complete so that CLECs are only forced to go through one migration rather than two.

D. BELLSOUTH'S OSS SYSTEMS ARE NOT OPERATIONALLY READY TO SUPPORT COMPETITION

BellSouth has not tested its OSS systems in any of the states involved in the current applications, instead choosing to rely on the tainted, out-of-date testing that it did in Georgia together with commercial usage data. If the Commission chooses to rely on this testing as well, BellSouth still cannot prove that its OSS systems are operationally ready for competition. Our specific concerns, each of which will be discussed in more detail below, follow:

(1) The commercial usage data produced by BellSouth show that it treats its own orders far differently than the orders of CLECs;

(2) BellSouth has produced no evidence at all of testing its OSS systems for xDSL loops and line sharing;

(3) BellSouth uses the change management process to quickly implement changes that affect its business, but drags its feet in implementing changes that effect Covad.

(1) Commercial Usage Data Produced by BellSouth Shows Discriminatory Treatment of CLECs

The commercial usage data produced by BellSouth for April, 2002 (the most recent data available), show that BellSouth treats Covad's orders and customers differently than its own in almost every phase of the ordering and provisioning of Covad's most important DSL products. Although this data is discussed in more detail below under Checklist Item 4, the abysmal performance it shows causes BellSouth's application to fail under Checklist Item 2 as well. These critical examples from the April performance data illustrate the discriminatory impact of the deficient OSS BellSouth makes available to competitors ordering UNE loops:

- On the critical measure of Order Completion Interval, BellSouth discriminated dramatically against Covad, completing its own orders for UCL-ND loops requiring dispatch one day faster than Covad's orders in North Carolina, two days faster in Alabama, and ***five days faster*** in Kentucky.
- For the same loop, Covad's customers experienced provisioning troubles within thirty days of installation at a rate ***two times higher*** than the rate experienced by BellSouth's customers.

Many other examples of such behavior are set out below, but even this sample serves to show that BellSouth treats its own customers far differently that CLEC customers in many, many areas.

(2) BellSouth has produced no evidence at all of testing of its OSS systems for xDSL loops and line sharing

Any reliance on the Georgia KPMG testing to determine compliance with Checklist Item 2, particularly with respect to OSS for xDSL loops and Line Shared Loops, would be misplaced. As noted in detail above, the Georgia Third Party Test failed to evaluate many of the critical processes, interfaces, and situations that DSL providers in the BellSouth region face daily. This failure to test so many xDSL processes combined with BellSouth's miserable showing in its performance measurements leads directly to the conclusion that BellSouth cannot demonstrate compliance with Checklist Item 2.

(3) BellSouth's Implementation of Change Management Procedures is Harmful to CLECs

In order to demonstrate that it is providing nondiscriminatory access to its OSS, BellSouth must first demonstrate that it "has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and . . . is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."[18] Only by showing that it adequately assists competing carriers to use available OSS functions can BellSouth prove that it offers an efficient competitor a meaningful opportunity to compete.[19] As part of this demonstration, the Commission gives substantial consideration to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time.[20] The Commission has concluded that, without a functional change management process in place, a BOC can impose substantial costs on competing carriers simply

[18] *Bell Atlantic New York Order* 15 FCC Rcd at 3999, ¶ 102.
[19] *Id.* at 3999-4000, ¶ 102
[20] *Id.* at 4000, ¶ 102.

by making changes to its systems and interfaces without providing adequate testing opportunities and accurate and timely notice and documentation of the changes.[21]

The fundamental problem with this process in all of the states included in the current application is that Change Control is entirely within the control of BellSouth. BellSouth retains veto power over the agenda, is entirely unsupervised by regulators, and operates without penalty for delaying, denying outright, or degrading competitive LEC access to needed OSS or other changes.[22] A perfect example of this and of BellSouth's in-your-face brand of discrimination is provided by Covad's efforts to simply get BellSouth to provide it with the information needed to verify BellSouth's bills. As will be apparent from this example (set forth below), BellSouth's behavior in correcting OSS problems is dramatically different for itself than for CLECs: it fixes problems it considers important, but refuses to fix the same problems in the systems that affect CLECs.

As previously mentioned, BellSouth's Line Shared Loop OSS has a defect that prevents it from returning information to Covad necessary for the verification of BellSouth's bills. As a result, Covad is forced to resort to an expensive and time-consuming manual process to gather this necessary information. Covad has taken extensive steps to attempt to get this problem solved, but to no avail. On January 18, 2002, Covad submitted Change Request 621-FTTF36 to BellSouth specifically requesting that this serious defect be corrected. According to BellSouth procedures, after Covad submitted the change request, the request then had to be identified as either a "Defect"—meaning a problem with BellSouth's OSS that needed to be repaired—or a

[21] *Id.* at 4000, ¶ 103.

[22] It is worth noting that KPMG's Florida testing also recognized this problem. In Exception 88, opened on July 1, 2001, KPMG found that the BellSouth's change control process "does not allow CLECs to be involved in prioritization of all CLEC-impacting change requests." Amazingly, a year later and near the end of the testing, this exception remains open. See KPMG Draft Final Report, Version 1.0, Test Reference PPR1-6, pp. RMI-18 through 20 (available at http://www.psc.state.fl.us/industry/telecomm/oss/oss.cfm).

"Feature Enhancement" which is a functionality that a CLEC wants but is not actually required. Despite the fact that BellSouth's failure to provide the pseudo circuit number amounts to denying Covad the information needed to check if BellSouth bills it fairly, it took BellSouth ***four months*** just to decide how to ***classify*** the problem: on May 17, 2002, it finally declared that its failure to provide the pseudo circuit number was, indeed, a defect in its OSS. Now, two more months have passed, and BellSouth has thus far refused to even provide a date as to when it may get around to fixing it.

Of course, BellSouth's treatment of a similar defect for which it opened a Change Request itself has been remarkably different. On May 3, 2002, BellSouth opened Change Request 766 to deal with a precisely analogous defect in its Local Number Portability (LNP) interface, a defect that prevented circuit numbers from being provided in responses to orders for certain non-designed services. ***Within a week, BellSouth classified the defect and set a schedule for the defect to be fixed***. ***For the defect identified by Covad, however, nearly six months have passed, and BellSouth has yet to even schedule its repair.*** In short: BellSouth fixes problems that concern BellSouth and ignores problems that effect the CLECs.

III. CHECKLIST ITEM 4: NONDISCRIMINATORY ACCESS TO LOOPS

A. LOOP PERFORMANCE ISSUES

(1) BellSouth Fails to Provide Non-Discriminatory Provisioning of Unbundled Loops

BellSouth's Interconnection Agreement with Covad requires it to deliver Line Shared Loops in three days. The latest available data, however, indicates that BellSouth is delivering this loop about one day late throughout the BellSouth region, an ongoing provisioning problem that has a serious impact on Covad's ability to provided timely service to its customers.

BellSouth's one day delay is significant for two reasons. First, Covad is competing for customers with BellSouth, and customers want faster service. When BellSouth slows a CLEC's ability to deliver DSL service quickly, it is harming business in a very real way. Second, BellSouth's delay costs Covad money. We do not begin billing our customers until their service is up-and-running, and, to the extent that BellSouth's inability to meet its contractual obligations slows our ability to reach this point, it is costing us revenue.

BellSouth's provisioning interval is not the only problem, however. Its other provisioning problems include:

- The information contained in BellSouth's database is often inaccurate, particularly with regard to identifying loops that need conditioning. The result of these inaccuracies is that Covad customers are informed of a delivery date based on the information in BellSouth's database, only to have that date pushed back by a minimum of 10 or 11 days when the need for conditioning is discovered.
- Despite the fact that BellSouth central office technicians are required to check each Line Shared Loop for the ability to support DSL services, they often complete the provisioning process even when the loop in question needs conditioning to be able to support those services. The result of this is that the loop fails when Covad attempts to activate its customer's service. When a loop needs conditioning, the loop should be placed in a jeopardy status with Covad. BellSouth's failure to follow its own simple procedures in this regard results in delays over and above the delays inherent in the loop conditioning process.

BellSouth's provisioning problems with the UCL-ND Loop are even worse. In fact, its performance on this loop has been so bad that Covad has been forced to stop ordering the loop

entirely in every state in the BellSouth region except Florida, and we continue to order it in Florida only for the purpose of giving BellSouth the opportunity to fix it. Unfortunately, BellSouth has proven incapable of properly provisioning this loop in accordance with its own processes and its Interconnection Agreement (IA) with Covad. As a result, the UCL-ND loop has cost Covad far more in trouble ticket charges, man-hours and personnel frustration than any purported cost savings. Now, more than a year after the UCL-ND was introduced, Covad still cannot consistently order and receive a timely, functional loop.

BellSouth's own records speak directly to its dismal performance on this loop. Of 50 UCL-ND orders in January 2002, Covad data showed that BellSouth failed to properly provision 38 of those orders. After investigating, BellSouth admitted that of the 30 orders it believed were timely delivered, BellSouth had failed to follow process and notify Covad that the order was closed on 7 orders. BellSouth further admitted that 10 of the 50 orders were nonfunctional at turn-up. Thus, BellSouth's own data showed that more than 17 out of 50 orders were improperly provisioned. Irrespective of which set of data is used, serious process and provisioning problems clearly exist with this loop.

Further, when BellSouth does manage to provision the loop, it cannot fix subsequent problems with it at anywhere near an acceptable level. An analysis of January-March, 2002, data reveals that, of Covad's orders that require trouble tickets, 43% require more than one trouble ticket to resolve whatever problem there is with the loop. Moreover, even excluding BellSouth's failure to provide demarcation point information, 9% of Covad UCL-ND orders cannot be turned up on dispatch because of BellSouth loop issues.

As alluded to above, demarcation information on this loop is the second major problem with BellSouth's performance. In addition to its provisioning problems and despite Covad's

continuous efforts to resolve this issue, BellSouth is still refusing to provide demarcation point information in accordance with its Interconnection Agreement with Covad. Since Covad orders UCL-ND loops for business customers, the loops are often to office building that may have multiple phone closets and thousands of lines. Demarcation point information enables Covad's technicians to learn where BellSouth has dropped the loop, so that Covad can perform the remaining work to get a customer into service. Without demarcation point information, Covad technicians are forced to play blind man's bluff, searching basements, multiple phone closets and attempting to find the proverbial needle in a haystack.

Covad and BellSouth clearly understood the importance of transferring this information from BellSouth to Covad, and that's why the following language was put in the Interconnection Agreement:

> Where a technician is dispatched to provision a loop, the BellSouth technician shall tag a circuit for identification purposes. Where a technician is not dispatched by BellSouth, BellSouth will provide sufficient information to Covad to enable Covad to locate the circuit being provisioned.

(Interconnection Agreement, Attachment 2, § 2.1.17.9.3). Thus, irrespective of whether BellSouth dispatches a technician, BellSouth is obligated to provide information to Covad sufficient to allow Covad to locate the circuit being provisioned. Covad has attempted to have this problem solved, but to no avail.

When this problem first arose, BellSouth suggested that Covad order joint acceptance testing on the UCL-ND loops for the purpose of obtaining demarcation point information. As an interim measure designed to get our customers into service, Covad was willing to do this while BellSouth devised a permanent solution. This step, however, adds another $50-$100 to the

Covad loop price, and Covad cannot continue to pay an extra free to get BellSouth to meet its pre-existing contractual obligations.

Then, in April, Covad wrote to BellSouth informing BellSouth that we would be opening trouble tickets in advance of the Covad truck roll to obtain demarcation point information where BellSouth did not provide it, and we spoke with BellSouth personnel to inform BellSouth of this process and to ask for help working toward a better solution for both companies. BellSouth has not responded to either of these requests, and it is now refusing to open a trouble ticket to obtain demarcation point information. Again, this unilateral action on BellSouth's part directly violates its contractual obligations and is yet another illustration of its refusal to even attempt to develop a workable solution to this operational problem.

This problem will never be solved unless BellSouth commits itself to finding a solution. First, BellSouth must identify a high-ranking operations officer to be responsible for resolution of these problems. Second, BellSouth should be required to perform joint testing before it closes a trouble ticket to ensure that multiple tickets are not required to solve a single problem. As mentioned above, Covad data shows that 45% of our UCL-ND orders had trouble tickets and of those orders requiring trouble tickets, 43% had multiple tickets. This clearly indicates BellSouth's failure to properly address troubles on these loops in the first instance. As a result of this egregious track record, Covad has already asked BellSouth to participate in Joint Acceptance Testing before closing trouble tickets, but BellSouth has refused. BellSouth's performance illustrates why such testing is essential. Finally, BellSouth must develop some process to provide Covad with demarcation point information on every UCL-ND loop ordered. This is required by the IA, and BellSouth's failure to provide such information is a clear

violation of that contract and its obligation to provide Covad with nondiscriminatory access to loops.

(2) BellSouth Reports Poor Performance for Loop Delivery

BellSouth produces a Monthly State Summary of its performance in various metrics for each state where it provides service. In preparing this testimony, Covad attempted to use the May data, but BellSouth failed to post its May results in time for this filing despite the fact that its own procedures called for it to be posted by June 30, 2002. Thus, April 2002 data is the most recent data available. As set forth below, the data clearly establishes a pattern of poor performance insufficient to support BellSouth's application for long distance authority.

A. Order Completion Interval (P-4)

This metric measures the interval from BellSouth's issuance of a Firm Order Confirmation to Covad until BellSouth completes the service order. BellSouth's performance on this metric fails in several notable ways. First, despite an IA provision requiring it to deliver Line Shared Loops to Covad in three days, it is taking BellSouth an average of 3.88 days to deliver this loop in Alabama, 4.07 days in Kentucky, and 3.78 days in North Carolina. This one day difference in provisioning intervals significantly impacts Covad's ability to serve its customers with the speed and efficiency that they expect.

BellSouth's performance on the delivery of the UCL-ND loop is far worse and serves to highlight BellSouth's region-wide discrimination: for orders of this loop requiring dispatch, BellSouth completed orders for its own customers one day faster than Covad's orders in North Carolina, two days faster in Alabama, and ***five days faster*** in Kentucky. This is discrimination of the worst kind on a critical metric, and BellSouth must be forced to improve its results before being granted long distance authority.

B. Percent Provisioning Troubles Within 30 days (P-9)

Percent Provisioning Troubles Within 30 Days measures the percent of trouble reports filed for loops within 30 days of installation. Generally, this metric assesses the quality of the installation of an xDSL loop, since loop quality is an essential aspect of non-discriminatory loop provisioning. In the Southwestern Bell Texas 271 Order, the FCC found two important reasons why measurement of trouble tickets within 30 days is important for determining checklist compliance. First, trouble reports within 30 days are "indicative of the quality of network components supplied by the incumbent LEC."[23] Second, the FCC concluded that advanced services customers that experience substantial troubles in the period following installation of an xDSL-capable loop are unlikely to remain with a competing carrier.[24]

BellSouth's results on this critically important measure show a breathtaking level of discrimination. The results are summarized below:

[23] *SWBT Texas 271 Order*, ¶ 299.
[24] *Id.*

State	% Line Shared Loops experiencing trouble within 30 days *(dispatch)*		% Line Shared Loops experiencing trouble within 30 days *(non-dispatch)*	
	CLEC Aggregate	BellSouth	CLEC Aggregate	BellSouth
Alabama	28.57%	3.86%	6.78%	1.37%
Kentucky	0.00%	0.00%	5.88%	No data reported.
Mississippi	No data reported.	2.12%	No data reported.	0.85%
North Carolina	50.00%	1.81%	17.39%	1.24%
South Carolina	No data reported.	2.92%	No data reported.	0.70%

In short, by most measures, ***BellSouth installs loops far more reliably for its own customers than it does for CLEC customers.*** This burden falls squarely on CLEC customers as they endure service interruptions at a rate far higher than that experienced by BellSouth's own customers, and on the CLECs themselves as those customers lose faith in the CLECs' ability to provide a high level of service.

C. Maintenance Average Duration (M&R-3)

The purpose of this metric is to measure the time that it takes (in hours) for BellSouth to complete work once a trouble ticket has been issued. This measurement is, again, critical to the customer experience because it provides a direct measure of down-time, and BellSouth's performance on this metric provides the Commission with evidence that BellSouth's performance on various metrics should not be treated as a regional issue. BellSouth's performance on this metric, though worse for CLECs than for itself for many loops throughout the region, is particularly bad in Alabama. There, for UCL-ND loops not requiring dispatch, BellSouth managed to fix problems for its own customers in 8.10 hours while taking ***24 hours*** to

get Covad's customers back in service. For Line Shared Loops requiring dispatch, BellSouth got its customers running in 41.83 hours, but took ***70 hours*** for Covad's customers. Finally, for Line Shared Loops not requiring dispatch, BellSouth finished repair work in 3.56 hours for its own customers, but took ***12.00*** hours for Covad's.

These numbers show two things: first, BellSouth's operations ***are not*** regional despite its claims to the contrary. Different states have different problems, and each should be treated individually. BellSouth's collectively poor performance on metrics across the region doom the present long distance applications, but, as shown by this example, its poor performance in Alabama is particularly noteworthy.

D. Percent Repeat Troubles Within 30 Days (M&R-4)

This measures the percentage of lines/circuits that have more than one trouble report in a thirty day period. As with all of the other measures, poor performance by BellSouth on this measure can translate directly to lost customers for Covad because repeat troubles can destroy customer confidence. Once again, BellSouth's performance on this metric has been miserable, but, as with the maintenance duration metric, spotty across the region, with Line Shared Loops not requiring dispatch being treated in a particularly discriminatory manner in Kentucky and North Carolina.

In Kentucky, 40.00% of Covad's customers who had already had a loop problem requiring repair experienced repeat troubles, but this percentage for BellSouth was only 26.59%. The spread in North Carolina was even worse: 57.14% for Covad as compared to 23.50% for BellSouth.

This proceeding provides the Commission with an opportunity to review the state of competition in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina and to

determine whether BellSouth has provided CLECs with a meaningful opportunity to compete there. The metrics discussed above give but a glimpse of the type of performance Covad and other CLECs receive from BellSouth, and the simple fact that these numbers reveal is this: BellSouth performs far better for its retail operations than for CLECs. These statistics represent dramatic discrimination against Covad and other CLECs, discrimination that should preclude BellSouth from having its 271 Applications granted. As CLECs in the BellSouth region struggle to find a foothold in the marketplace, BellSouth's performance in delivering loops continues to pose a significant obstacle to successful competition. Before BellSouth is permitted to win 271 approval in these states, the Commission should first ensure that BellSouth-sponsored obstacles to competition have been eliminated. As is apparent from the statistics, this day has not yet arrived.

B. LFACS ISSUES

BellSouth's LFACS database is full of errors and poorly maintained. This creates several significant problems for CLECs. First, this database is the primary source of information about the physical makeup of BellSouth's loops, including such information as loop length and whether or not the loop is loaded (meaning that it would need to be "conditioned" before it could be used to provide DSL services). The database, however, is rife with inaccuracies, and BellSouth's current processes work against rather than with CLECs in resolving the loop problems that arise from these database inaccuracies. BellSouth should be required to implement a plan to complete and update its loop records for all residential accounts.

Without such a program, CLECs in the BellSouth region will continue to experience significant discrimination because the problems that arise from BellSouth's database inaccuracies fall disproportionately on CLECs. This is so because a significant portion of the

cost of any loop is what CLECs pay to BellSouth for processing orders and other administrative tasks. Database inaccuracies force CLECs to place additional orders and open multiple trouble-tickets, a process that is far more expensive for the CLEC than for BellSouth. Furthermore, as discussed above, BellSouth's generation of divergent, unrelated billing and provisioning orders compounds the problems and costs Covad faces as a result of errors in the LFACS database. The resulting need for Covad to engage in duplicative and unnecessary manual processes increases Covad's costs both with respect to its own personnel and internal processes as well as the additional payments Covad must make to BellSouth for manual OSS transactions. Thus, BellSouth's perpetuation of its poorly maintained LFACS database acts like a hidden tax on CLECs that prevents us from competing on the same footing as BellSouth, and prevents consumers and small businesses in the region from enjoying the full benefits of such competition.

IV. CONCLUSION

For the reasons stated herein, the Commission should reject the applications of BellSouth for authority to provide in-region, interLATA services in Alabama, Kentucky, Mississippi, North Carolina and South Carolina.

Respectfully submitted,

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